

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

AMERICAN AIRLINES, INC.,

Plaintiff,

v.

SKIPLAGGED, INC.,

Defendant.

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Civil Action No. 4:23-cv-00860-P

APPENDIX IN SUPPORT OF DEFENDANT SKIPLAGGED, INC.’S RESPONSE TO  
PLAINTIFF AMERICAN AIRLINES, INC.’S MOTION TO STRIKE AND EXCLUDE  
DEFENDANT SKIPLAGGED, INC.’S EXPERT GARY L. GUTZLER

Defendant Skiplagged, Inc. (“Skiplagged”) files this Appendix in Support of Defendant Skiplagged, Inc.’s Response to Plaintiff American Airlines, Inc.’s Motion to Strike and Exclude Defendant Skiplagged, Inc.’s Expert Gary L. Gutzler, as follows:

EXH. NO.	DESCRIPTION	APPX. NO.
1	Deposition Transcript excerpts of Gary L. Gutzler; Dated: 07/12/24	001-011
2	Deposition Transcript excerpts of David N. Fuller; Dated: 8/13/24 (Under Seal)	012

Dated: August 30, 2024

Respectfully submitted,

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***Attorneys for Defendant, Skiplagged, Inc.***

**CERTIFICATE OF SERVICE**

On August 30, 2024, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the CM/ECF system which will send a notice of electronic filing to all counsel of record. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Abigail R. S. Campbell  
ABIGAIL R.S. CAMPBELL

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
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AMERICAN AIRLINES, INC., )  
)  
Plaintiff, )  
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v. ) CIVIL ACTION  
) NO. 4:23-cv-00860-P  
SKIPLAGGED, INC., )  
)  
Defendant. )

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ORAL AND VIDEOTAPED DEPOSITION OF  
GARY L. GUTZLER  
JULY 12, 2024  
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ORAL AND VIDEOTAPED DEPOSITION OF GARY L. GUTZLER,  
produced as a witness at the instance of the PLAINTIFF, and  
duly sworn, was taken in the above-styled and numbered cause on  
July 12, 2024, from 10:00 a.m. to 12:30 p.m., before Amber  
Garcia, Notary Public in and for the State of Texas, reported  
by machine shorthand, at the law offices of Condon Tobin Sladek  
Thornton Nerenberg, PLLC, 8080 Park Lane, Suite 700, Dallas,  
Texas, pursuant to the Federal Rules of Civil Procedure.

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1 Q. And what is your understanding, the components of the  
2 \$6.1 million number to be?

3 A. It includes the service fees that Skiplagged  
4 generates from its customers, it includes estimates of what  
5 I'll call "ancillary revenue," which could be related to  
6 baggage insurance, trip insurance. It includes offsets or  
7 discounts and allowances in -- in returns, including travel  
8 credits, discounts for cancellations, chargebacks, transaction  
9 fees. So that \$6.1 million, my understanding, is a net revenue  
10 number.

11 Q. So the next sentence, "Skiplagged does not track  
12 operating costs related specifically to American Bookings."  
13 How did you come to form that belief?

14 A. It was either Mr. Gellert's deposition, but I suspect  
15 it was based on my conversation with Mr. Zaman.

16 Q. Okay. Anything else?

17 A. I'm not sure if it was in Mr. Zaman's declaration  
18 also. Potentially, in an interrogatory answer. I'm not sure.

19 Q. So the next sentence we talk about -- you talk about  
20 Skiplagged's total operating costs from 2020 through 2023 to be  
21 \$13,936,004. Do you see that?

22 A. Yes.

23 Q. And where did you get that number?

24 A. From the Skiplagged income statements.

25 Q. And when you say "income statements," we're talking

1 the profit and loss sta- --

2 A. Profit and loss statements.

3 Q. I'm going to keep going back to that because that's  
4 what they say at the top of the document. I understand that  
5 income statements and P&L are the same. I'm not trying to give  
6 you a hard time, but that's what the document says, and so...

7 A. And if I use the wrong terminology, I mean profit and  
8 loss statement the same as an income statement.

9 Q. Thank you.

10 And then it says, "its" -- "its," meaning  
11 Skiplagged's, "total operating costs related to the generation  
12 of, among other things, American Bookings revenue for the same  
13 period total \$12,680,290." Do you see that?

14 A. I do.

15 Q. And how did you arrive at that number?

16 A. For purposes of determining the cost related to the  
17 trademark and copyright claims, I excluded certain costs that I  
18 felt were either discretionary or not directly related to  
19 Skiplagged's operations, and its efforts to generates revenues  
20 and operate the firm. And so I excluded those types of costs,  
21 and focused on those costs that were related to generating  
22 revenues for the firm.

23 Q. In assessing the cost directly related to generation  
24 of revenue, did you distinguish between revenue attributable to  
25 American Airlines and other revenues?

1 A. No, not in this report.

2 Q. Yes, sir. I understand it's not in the report, but  
3 did you do any calculations similar to those in Table 2 for any  
4 year before 2020?

5 A. I reviewed those income statements, profit and loss  
6 statements, but I haven't included any sort of calculations of  
7 those in the report.

8 Q. I apologize. I'm not trying to be difficult. But I  
9 under- -- I understand you reviewed them. I understand that  
10 you didn't include them in the report.

11 My -- my question is, did you do the similar  
12 calculations for any year prior to 2020?

13 A. I don't remember. I'm not sure.

14 Q. Have you done any similar calculations for any part  
15 of 2024?

16 A. No.

17 Q. It says -- Paragraph 20, it says, "Based on my review  
18 and discussions with Mr. Zaman," do you see that?

19 A. I do.

20 Q. It says, "Based on my review," what specifically did  
21 you review to come to the conclusion that certain of those  
22 expenses are related to American Bookings?

23 A. Based on my understanding of what's included in the  
24 categories.

25 Q. And where did you gain that understanding of what's

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1 included in the categories?

2 A. Mr. Zaman.

3 Q. Did you review any documents to come to the  
4 conclusion about what is in each of those categories?

5 A. I don't believe so.

6 Q. What did Mr. Zaman tell you that caused you to come  
7 to the conclusion that certain of those expenses were related  
8 to American Bookings?

9 A. I -- I think I disagree with that statement. What  
10 Mr. Zaman told me is, what is included within each category of  
11 costs, and then I made the determination of what to include for  
12 purposes of this report. Include as a cost for purposes of  
13 this report.

14 Q. Okay. So other than your discussions with Mr. Zaman,  
15 did you have any other basis for forming those opinions about  
16 the costs?

17 A. I don't believe so, other than what I've seen in  
18 other trademark and copyright cases.

19 Q. When you say "other than what you've seen in other  
20 trademark and copyright cases," what do you mean by that, sir?

21 A. That -- for example, generally, taxes and legal  
22 expenses, generally, aren't included as a deduction for  
23 purposes of calculating defendant's profits in a copyright or  
24 trademark case.

25 Q. Anything else?

1 A. I don't believe so.

2 Q. Okay. And I believe you've identified nine  
3 categories of expenses that you believe or you're opining  
4 should be included as deductions related to the American  
5 Bookings, correct?

6 A. Looks like it. Yes.

7 Q. Are there -- other than -- I'm just going to list  
8 them so we'll be on the same page. This is starting at  
9 Page 10. 1, Advertising; 2, Bank Charges; 3, Insurance; 4,  
10 Office Expenses; 5, Other Business Expenses; 6, Payroll; 7,  
11 Renter Lease; 8, Repair and Maintenance; and 9, Utilities.  
12 Were there any other expenses that are related to the American  
13 Bookings revenue?

14 A. Not, in my opinion, for purposes of ongoing  
15 generation of revenues. One could argue that all the costs  
16 incurred by Skiplagged in some way relate to the American  
17 Bookings. But for purposes of my analysis, what I wanted to  
18 focus on were the costs more closely related to its actual  
19 generation of revenues.

20 Q. Okay. So then just to be clear, you're not going to  
21 opine in this case that all of Amer- -- or Skiplagged's  
22 expenses should be deducted for purposes of the trademark or  
23 copyright analysis, correct?

24 A. I don't intend to do that, no.

25 Q. So under the advertising, I can read here in your

1 reflected in Table 4?

2 A. I don't believe so.

3 Q. Can you tell me specifically how each of the costs in  
4 Table 4 actually contributed directly to the American Bookings  
5 revenue?

6 A. Well, I think those costs are the costs incurred for  
7 employees, for equipment, for operating expenses, that allow  
8 Skiplagged to operate its website and generate revenues from  
9 that website.

10 Q. Anything else?

11 A. At a high level, I think that summarizes it.

12 Q. Well, at any level, is there anything else?

13 A. No, I -- I think that is my explanation,  
14 understanding of what and why these categories I've included.

15 Q. In Paragraph 23 of your report, "Thus, based on the  
16 above, Skiplagged had costs approximately \$12.7 million that  
17 were incurred in generating, among other revenue streams, the  
18 American Bookings revenue." Do you see that?

19 A. Yes.

20 Q. And what are the other revenue streams that you're  
21 referring to here?

22 A. It could be other facilitated bookings on other  
23 airlines, United, Delta, foreign carriers. It could be the  
24 revenue is generated from online travel agency -- agencies,  
25 whether it's the cost per click or cost per action revenue that

1 purposes of a calculation of Defendant's profits.

2 Q. The cost that you decided to include, those were the  
3 ones that Mr. Zaman told you to include, correct?

4 A. No.

5 Q. Okay.

6 A. I was not given any instructions on what costs to  
7 include or exclude. That -- that's my opinion what to include.

8 Q. When we were previously talking about the Stripe  
9 fees, do you remember that --

10 A. Yes.

11 Q. -- discussion?

12 Okay. You said that that was also an  
13 above-the-line deduction, do you remember that?

14 A. It's a deduction for purposes of calculating net  
15 revenue from gross revenue.

16 Q. Right. And so the net revenue is in Exhibit 2  
17 reflected as -- well, it says, "Gross profit," not "net  
18 profit," correct?

19 A. It says that, yes.

20 Q. Okay. So --

21 A. Net profit is the bottom line number.

22 Q. Right.

23 A. Okay.

24 Q. And so -- but I'm trying to figure this out. Because  
25 you said the Stripe fees were deducted above-the-line, meaning,

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SKIPLAGGED, INC., )  
)  
Defendant. )

10 REPORTER'S CERTIFICATION  
11 ORAL AND VIDEOTAPED DEPOSITION OF  
12 GARY L. GUTZLER  
13 JULY 12, 2024

15 I, Amber Garcia, Notary Public in and for the State of  
16 Texas, hereby certify to the following:

17           That the witness, GARY L. GUTZLER, was duly sworn by the  
18       officer and that the transcript of the oral deposition is a  
19       true record of the testimony given by the witness;

20 I further certify that pursuant to FRCP Rule 30 (e) (1)  
21 that the signature of the deponent:

22           \_\_\_\_\_ was requested by the deponent or a party before  
23   the completion of the deposition and returned within 30 days  
24   from date of receipt of the transcript.  If returned, the  
25   attached Changes and Signature Page contains any changes and


1 the reasons therefor;

2 \_\_\_\_\_x\_\_\_\_\_ was not requested by the deponent or a party  
3 before the completion of the deposition.

4 I further certify that I am neither attorney nor counsel  
5 for, related to, nor employed by any of the parties to the  
6 action in which this testimony was taken.

7 Further, I am not a relative or employee of any attorney  
8 of record in this cause, nor do I have a financial interest in  
9 the action.

10 Subscribed and sworn to on this the 19th day of July,  
11 2024.

12  
13  
14 

15 Amber Garcia, Notary ID No. 13426953-9

My commission expires: 3-24-2027

16 VERITEXT LEGAL SOLUTIONS

Firm Registration No. 571

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Fort Worth, Texas 76102

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# **EXHIBIT 2**

**(FILED UNDER SEAL)**